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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1965

No. 851

JOSEPH M. BRENNAN,

*Petitioner,*

VS.

CHARLES E. GROVER and JOHN E. GORSUCH, each individually, or jointly, or as agents, or partners in the Denver, Colorado law firm d/b as GORSUCH, KIRGIS, CAMPBELL, WALKER AND GROVER, and JOHN DOE, JOHN ROE, JANE DOE, JANE ROE, and JOHN AND JANE ROES unknown at the present time,

*Respondents.*

## BRIEF OF RESPONDENTS CHARLES E. GROVER AND JOHN E. GORSUCH, INDIVIDUALLY OR AS PARTNERS IN THE DENVER, COLORADO LAW FIRM d/b/a GORSUCH, KIRGIS, CAMPBELL, WALKER AND GROVER, IN OPPOSITION TO PETITION FOR CERTIORARI.

The above-named Respondents pray that Joseph M. Brennan's Petition for Writ of Certiorari be denied for the following reasons.

### Jurisdiction

Mr. Brennan's Petition for Certiorari states that the jurisdiction of the Supreme Court of the United States is invoked under Title 28 U.S.C. 1257(1) and Rule 21 of the Revised Rules of the Supreme Court of the United States. 28 U.S.C. 1257(1) provides that final judgments rendered by the highest court of a state may be reviewed

by the Supreme Court: "(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity." It is clear that no treaty or statute of the United States was questioned by the Supreme Court of Colorado in No. 21678. Probably Mr. Brennan has some other subsection of 28 U.S.C. 1257 in mind.

Mr. Brennan also cites Rule 21 of the Supreme Court Rules which relates to how review by certiorari is sought. It is not a jurisdictional rule. Supreme Court Rule 19 relates to considerations governing review on certiorari, the one relating to decisions of state courts being as follows:

> "(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

It is clear from Mr. Brennan's petition that the Colorado Supreme Court did not decide a federal question in its decision in the case of Joseph M. Brennan, Plaintiff in Error, v. Charles E. Grover, et al., Defendants in Error, No. 21678.

It is also pointed out that Mr. Brennan's Petition for Writ of Certiorari violates Supreme Court Rule 23(4) which provides that:

> "The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition."

It is also pointed out to the court that, although Mr. Brennan did not serve the Respondents with copies thereof, he apparently attached to his Petition for Writ of Certiorari nine copies of his opening brief in the Colorado Supreme Court and nine copies of his reply brief in the Colorado Supreme Court, which on page 11 of his Petition for Certiorari are referred to as being submitted with his Petition. These briefs constitute separate briefs in sup-

port of a Petition for Writ of Certiorari in violation of Supreme Court Rule 23(3) which provides that the clerk shall refuse to file any Petition for Writ of Certiorari to which is annexed or appended any supporting brief.

## Supplemental Statement of the Case

Civil Action No. B-76366 in the District Court in and for the City and County of Denver, State of Colorado, the action which Mr. Brennan appealed to the Supreme Court of the State of Colorado by Writ of Error, it being numbered 21678 in that court, and also being the action which he seeks to review by his Petition for Writ of Certiorari in the Supreme Court of the United States, was filed by Joseph M. Brennan against Charles E. Grover, John Gorsuch, Gorsuch, Kirgis, Campbell, Walker and Grover, and John Doe, John Roe, Jane Doe, Jane Roe, and John and Jane Roes unknown, on or about October 21, 1964, claiming an interest in Rock Wool Insulating Company and seeking to replevin certain stock certificates of Rock Wool Insulating Company. It was a continuation of a long line of litigation conducted pro se by Mr. Brennan against various parties, this being the litigation referred to by the Colorado Supreme Court in the recent case of Brennan v. City and County of Denver, et al., No. 21253, decided December 28, 1964, wherein the Supreme Court stated:

> "Certified copies of judgments entered in several previous cases against Plaintiff, concerning, in part, his alleged interest in the stock in question were made a part of the Clerk's Amended Motion for Summary Judgment. In fact, the record shows that the issue of Brennan's ownership has not only been finally determined in the state courts but that Brennan has also previously litigated in federal courts with various parties about this matter twelve different times, and, has been enjoined by the United States District Court of Colorado from filing any further such actions without first securing approval of the presiding judge of that court."

Joseph M. Brennan has been claiming an interest in Rock Wool Insulating Company and attempting to obtain the stock certificates thereto for many years. Upon the determination of various courts that he has no interest in Rock Wool Insulating Company, Mr. Brennan merely brings another action. In order to prevent this, Better Industries, Inc., by its attorneys, Gorsuch, Kirgis, Campbell, Walker and Grover, filed Civil Action No. B-45641, Better Industries, Inc. v. Joseph M. Brennan, Anthony E. Reilly and Frances E. Morrissey, in the District Court for the City and County of Denver, wherein on June 24, 1963, the court entered a judgment and decree appearing at supplemental record folios 11A-13A, which provided:

> "That the merger of Rock Wool Insulating Company into MPM Investment Company March 31, 1960 was in all respects valid and binding upon the Defendants in this action, that the Plaintiff has fully discharged all its obligations to said Defendants by the deposit of $1,750.00 into the Registry of this Court, that the Defendants have no further interest in Rock Wool Insulating Company, MPM Investment Company and Better Industries, Inc. arising through any interest in Rock Wool Insulating Company, and that the Defendants be and they hereby are enjoined from making any such claim."

After such judgment, Joseph M. Brennan brought an action against the Clerk to get stock certificate no. 55 and also the action involved in this appeal, Civil Action No. B-76366, against the attorneys in Civil Action No. B-45641. The action was an action of replevin for documents alleged to be in the possession of the Defendants, including stock certificate no. 55, or in the alternative, for damages in the amount of $3,060,000.

After the filing of the complaint in Civil Action No. B-76366, the Defendants, other than those not served, filed motions to dismiss, to post bond for costs and to strike. Also, in Civil Action No. B-45641 they filed a motion for contempt citation asking the court to order

Joseph M. Brennan to appear before it to show cause why he should not be punished for contempt for neglect and refusal to comply with the judgment of the court enjoining him from claiming any interest in Rock Wool Insulating Company. Such an order was issued and a hearing held November 20, 1964 at which hearing Joseph M. Brennan appeared and was given an opportunity to purge himself of the contempt. At the conclusion of the hearing an order was entered, a copy of which appears as Appendix A attached hereto and by this reference made a part hereof, finding the Joseph M. Brennan was in contempt of court in causing to be filed Civil Action No. B-76366, the subject of this writ of error. In said order the court gave Joseph M. Brennan until 9:00 a.m. December 11, 1964, in which to dismiss Civil Action No. B-76366 or suffer such fine or imprisonment as the court should then determine.

On December 11, 1964 Joseph M. Brennan refused to dismiss Civil Action No. B-76366 and the court ordered him to serve a 30-day sentence in the Denver County Jail commencing December 14, 1964. On December 14, 1964, the court suspended the jail sentence indefinitely upon the condition that Joseph M. Brennan does not institute any further civil actions of any kind or nature wherein he asserts any right, title or interest in or to the legal or beneficial ownership of any shares of Rock Wool Insulating Company, and dismissed Civil Action No. B-76366. That order is attached hereto as Appendix B and by this reference made a part hereof. The court also issued the order of December 14, 1964, in the action involved in this writ of error, entitled dismissal with prejudice, record folios 99-101.

The statements in the brief of the Plaintiff in Error that he was not afforded a hearing on the dismissal of Civil Action No. B-76366 are incorrect. Not only was Joseph M. Brennan granted the hearings previously stated, but he was in Civil Action No. B-76366 granted a hearing before Judge Pinchick on January 6, 1965, which resulted

in the order denying the Plaintiff's motion for rehearing or new trial which appears in the record at folio 104.

The dismissal of this action and its affirmance by the Colorado Supreme Court were correct inasmuch as Joseph M. Brennan's complaint shows on its face that it was an attempt to collaterally attack the judgment in Civil Action No. B-45641, Better Industries, Inc. v. Joseph M. Brennan, Anthony E. Reilly and Frances E. Morrissey, entered by the Denver District Court June 24, 1963, supplemental record folios 11A-13A, and the decree in Civil Action No. 6192 in the United States District Court for the District of Colorado, United States Gypsum Company v. Rock Wool Insulating Company et al., and Joseph M. Brennan, intervenor, filed October 14, 1963, supplemental record folios 39A-53A, both of which judgments found that Joseph M. Brennan has no interest and never had any interest in Rock Wool Insulating Company.

Mr. Brennan attempts to raise a federal question by asserting that his constitutional rights have been violated because he did not get a hearing. The record shows clearly that he had a number of hearings in this action and has been litigating this particular case for many years over and over again. A list of the cases litigated by Mr. Brennan involving the certificates of stock mentioned in his complaint are as follows:

(a) Civil Action No. 4820, United States District Court for the District of Colorado, entitled Joseph M. Brennan vs. W. A. Wills, Ltd., W. A. Wills, Herman Speken, William Greenberg, Herbert Korholz, Speken Wrecking Co., Rock Wool Insulating Company and M.P.M. Investment Company; judgment dismissing complaint affirmed by Tenth Circuit Court of Appeals, 263 F.2d 1 (1959); certiorari denied by United States Supreme Court, 360 U.S. 902 (1959).

(b) Civil Action No. 6393, United States District Court for the District of Colorado, entitled Joseph M. Brennan vs. Herbert F. Korholz, Rock Wool Insulating Co., M.P.M. Investment Co., and Reconstruction Finance Corporation.

Civil Action No. 6394, United States District Court for the District of Colorado, entitled Joseph M. Brennan vs. Roland N. Usher, The Citizens State Bank of Cortez, Minnequa Bank of Pueblo, William L. White, Rock Wool Insulating Company, Herbert F. Korholz and M.P.M. Investment Company.

Civil Action No. 6395, United States District Court for the District of Colorado, entitled Joseph M. Brennan vs. Arthur Allen, Herbert F. Korholz, Rock Wool Insulating Company, and M.P.M. Investment Company.

Civil Action No. 6396, United States District Court for the District of Colorado, entitled Joseph M. Brennan vs. W. A. Wills, Ltd., W. A. Wills, Herman Speken, Speken Wrecking Company, William Greenberg, Herbert F. Korholz, Rock Wool Insulating Company, and M.P.M. Investment Company.

Judgment dismissing complaint in these four cases affirmed by the Tenth Circuit Court of Appeals, 293 F.2d 751 (1961).

(c) Civil Action No. 6741. United States District Court for the District of Colorado, entitled Joseph M. Brennan vs. Rock Wool Insulating Company, M.P.M. Investment Company, Better Industries, Herbert F. Korholz, Martha F. Korholz, Howard P. Emrich, Audrey Johansen, Herman Speken, Anthony E. Reilly and Margaret Regan Reilly, dismissed by Judge Orley Phillips sitting as a District Judge.

(d) Civil Action No. 6177, United States District Court for the District of Colorado, entitled Robert S. Allen, James Allen, James J. Allen, Walker R. Allen, Harry E. Carter, Frank Karge, Clara Karge, Paul Bell, Virginia Bell, Robert H. McCormick, Jr., and Herbert S. Greenwald vs. Rock Wool Insulating Company, M.P.M. Investment Company, Colorado Insulating Company, Herbert F. Korholz, Martha F. Korholz, Herman Speken, Audrey Johansen, Howard Emrich and Martha Anne Korholz, Brennan's oral petition for intervention denied.

(e) Civil Action No. 34884, District Court in and for the County of Pueblo, State of Colorado, entitled Anthony E. Reilly and Margaret Regan Reilly vs. Herbert F. Korholz, Clarence O. Dimmock, Jr., Rock Wool Insulating Company, Reconstruction Finance Corporation, Clayton A. Becker, Oliver Gould, XYZ Corporation, First Doe and Second Doe, wherein Joseph M. Brennan's attempted intervention was denied.

(f) Civil Action No. 35528, District Court in and for the County of Pueblo, State of Colorado, entitled Mary Elizabeth Bates, David A. Sellers, Bertha E. Sellers, and Ann Blockhan, for themselves individually and for all other persons similarly situated, vs. Herbert F. Korholz, Oliver Gould, Clayton A. Becker, individually and as officers and directors of Rock Wool Insulating Company, and Rock Wool Insulating Company, wherein Joseph M. Brennan's attempted intervention was denied.

(g) Civil Action No. 36797, District Court in and for the County of Pueblo, State of Colorado, entitled Joseph M. Brennan vs. Herbert F. Korholz, Oliver Gould and Rock Wool Insulating Company, filed by Joseph M. Brennan.

(h) Civil Action No. 36868, District Court in and for the County of Pueblo, State of Colorado, entitled The People of the State of Colorado, on the Relation of R. L. Myers, vs. Mary E. Bates, D. K. Wolfe, Jr., C. C. Huston, Joseph M. Brennan, Earl P. Medea, Margaret Reilly and Eugene Carrell.

(i) Civil Action No. B-45641 in the District Court in and for the City and County of Denver, State of Colorado, entitled Better Industries, Inc., vs. Joseph M. Brennan, Anthony E. Reilly and Frances E. Morrissey, in which judgment was entered against Joseph M. Brennan on June 24, 1963.

(j) Civil Action No. 6192 in the United States District Court for the District of Colorado, entitled United States Gypsum Company vs. Rock Wool Insulating Company, M.P.M. Investment Company, Better Industries, Inc.,

Herbert F. Korholz, American Gypsum Company, and Joseph M. Brennan, Intervenor, affirmed by the Tenth Circuit Court of Appeals, 337 F.2d 849 (1964).

(k) Civil Action No. 21253 in the District Court in and for the City and County of Denver, State of Colorado, entitled Joseph M. Brennan vs. City and County of Denver, et al., affirmed by the Colorado Supreme Court, 397 P.2d 876 (1964).

(l) Civil Action No. 8828 in the United States District Court for the District of Colorado, entitled Joseph M. Brennan vs. Charles E. Grover, and John E. Gorsuch, each individually, or jointly, or as agents, or partners in the Denver, Colorado law firm known and d/b/a Gorsuch, Kirgis, Campbell, Walker and Grover, and other John Doe parties, judgment dismissing complaint affirmed by the Tenth Circuit Court of Appeals.

## CONCLUSION

It is respectfully submitted that the writ should be denied for the reasons that the Petition for Certiorari (1) does not set forth any of the grounds set forth in Rule 19 of the Revised Rules of this Court, (2) does not comply with Rule 23 of the Revised Rules of this Court, and (3) does not present any grounds upon which a reversal could be predicated.

GORSUCH, KIRGIS, CAMPBELL,
WALKER AND GROVER

By. Charles E. Grover

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Attorneys for Respondents

JANUARY 3, 1966

## APPENDIX A

## IN THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER AND STATE OF COLORADO

Civil Action No. B-45641

BETTER INDUSTRIES, INC.
a Massachusetts corporation,

*Plaintiff,*

vs.

JOSEPH M. BRENNAN,
ANTHONY E. REILLY AND
FRANCES E. MORRISSEY,

*Defendants.*

ORDER

THIS MATTER, coming on to be heard by the Court this 20th day of November, 1964, at 9 o'clock a.m., upon the previous Order of this Court entered November 12, 1964, requiring that the Defendant Joseph M. Brennan appear to show cause, if any he may have, why he should not be punished by this Court for contempt for neglect and refusal to comply with the injunction in the judgment and decree entered heretofore, and why to vindicate the dignity of the Court a fine or imprisonment should not be imposed, and, further, why Defendant Joseph M. Brennan should not be required to pay Plaintiff's attorneys' fees and costs,

And the Court having heard argument of counsel for Plaintiff above named, and having heard argument of the Defendant Joseph M. Brennan, appearing pro se,

**The Court Doth Find:**

1) That heretofore on the 24th day of June, 1963, in this Civil Action No. B-45641, this Honorable Court entered a judgment and decree containing, among other things, the following:

> "That the merger of Rock Wool Insulating Company into MPM Investment Company March 31, 1960, was in all respects valid and binding upon the Defendants in this action, that the Plaintiff has fully discharged all its obligations to said Defendants by the deposit of $1,750.00 into the registry of this Court, that the Defendants have no further interest in Rock Wool Insulating Company, MPM Investment Company and Better Industries, Inc., arising through any interest in Rock Wool Insulating Company, and that the Defendants be and they hereby are enjoined from making any such claim."

2) That the Defendant Joseph M. Brennan, in causing to be filed on or about October 21, 1964, in the District Court in and for the City and County of Denver and State of Colorado, Civil Action No. B-76366 entitled Joseph M. Brennan v. Charles E. Grover, et al., wherein allegations are made by the said Joseph M. Brennan claiming an interest in Rock Wool Insulating Company and Better Industries, Inc. arising through any interest in Rock Wool Insulating Company, does constitute contempt of this Court, and that said Joseph M. Brennan, by filing said Civil Action No. B-76366, is now in contempt of this Court.

3) In making the foregoing findings, the Court has not found it necessary to consider the action of Joseph M. Brennan in filing in the District Court of the City and County of Denver and State of Colorado, Civil Action No. B-68156, on or about December 20, 1963, entitled, Joseph M. Brennan v. City and County of Denver, a a Municipal Corporation in the State of Colorado,

and Frank H. Conry, Clerk of the District Court of said Corporation, or Civil Action No. 8828, filed on or about October 19, 1964, in the United States District Court for the District of Colorado, and entitled Joseph M. Brennan v. Charles E. Grover et al.

**And the Court Doth Hereby Order, Adjudge and Decree:**

1) That said Joseph M. Brennan, Defendant in this action, may purge himself of contempt by dismissing said Civil Action No. B-76366 in the District Court in and for the City and County of Denver and State of Colorado.

2) That the Defendant Joseph M. Brennan shall appear before this Court at 9 o'clock a.m. on December 11, 1964, and shall satisfy this Court that said Civil Action No. B-76366 has been dismissed, and if the Court at that time and place determines that said Civil Action No. B-76366 has not been dismissed, the said Joseph M. Brennan forthwith shall be subject to such fine and/or imprisonment in the County jail of the City and County of Denver, in such amount and/or for such duration as this Honorable Court then may determine.

DONE IN OPEN COURT THIS 20th day of November, 1964.

BY THE COURT:

(Signed SAUL PINCHICK)
JUDGE

## APPENDIX B

## IN THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER AND STATE OF COLORADO

Civil Action No. B-45641

BETTER INDUSTRIES, INC.
a Massachusetts corporation,

*Plaintiff,*

vs.

JOSEPH M. BRENNAN,
ANTHONY E. REILLY AND
FRANCES E. MORRISSEY,

*Defendants.*

ORDER

THIS MATTER, coming on to be heard by the Court this 14th day of December, 1964, at 9 o'clock a.m., upon the previous Order of this Court entered December 11, 1964, requiring the Defendant Joseph M. Brennan to appear to commence the sentence of 30 days in the City and County of Denver jail passed upon him for contempt of this Court December 11, 1964, and the Court having heard the statement of the Defendant Joseph M. Brennan and the attorneys for the Plaintiff being present,

**The Court Doth Find:**

1. That heretofore on the 24th day of June, 1963, in this Civil Action No. B-45641, this Honorable Court entered a judgment and decree containing, among other things, the following:

"That the merger of Rock Wool Insulating Company into MPM Investment Company March 31, 1960, was in all respects valid and binding upon the Defendants in this action, that the Plaintiff has fully discharged all its obligations to said Defendants by the deposit of $1,750.00 into the registry of this Court, that the Defendants have no further interest in Rock Wool Insulating Company, MPM Investment Company and Better Industries, Inc., arising through any interest in Rock Wool Insulating Company, and that the Defendants be and they hereby are enjoined from making any such claim."

2. That the act of the Defendant Joseph M. Brennan, in causing to be filed on or about October 21, 1964, in the District Court in and for the City and County of Denver and State of Colorado, Civil Action No. B-76366 entitled Joseph M. Brennan v. Charles E. Grover, et al., wherein allegations are made by the said Joseph M. Brennan claiming an interest in Rock Wool Insulating Company and Better Industries, Inc. arising through any interest in Rock Wool Insulating Company, does constitute contempt of this Court, and that said Joseph M. Brennan, by filing said Civil Action No. B-76366, is now in contempt of this Court.

3. That the Court has given the Defendant Joseph M. Brennan ample opportunity to purge himself of this contempt, having entered an Order November 20, 1964 allowing the Defendant Joseph M. Brennan until 9 o'clock a.m. on December 11, 1964 to do so and having ordered the said Joseph M. Brennan to appear at said time to satisfy this Court that Civil Action No. B-76366 had been dismissed.

4. That on December 11, 1964 Defendant Joseph M. Brennan appeared before this Court but had not dismissed and refused to dismiss Civil Action No. B-76366, and was thereupon sentenced by this Court to serve 30 days in the City and County of Denver jail, the said

Joseph M. Brennan being ordered to appear at 9 o'clock a.m. December 14, 1963 to begin serving said sentence.

THE COURT DOTH HEREBY ORDER, ADJUDGE AND DECREE: That Civil Action No. B-76366, Joseph M. Brennan v. Charles E. Grover, et al., be and it hereby is dismissed with prejudice, the cost thereof to be paid by the said Joseph M. Brennan.

IT IS FURTHER ORDERED AND DECREED that the sentence of Joseph M. Brennan to 30 days in the City and County of Denver jail imposed upon him December 11, 1964 by virtue of his willful violation of the previous injunction of this Court be and it hereby is suspended indefinitely upon the condition that Joseph M. Brennan does not institute any further civil actions of any kind or nature whatsoever wherein the said Joseph M. Brennan claims, alleges or asserts any right, title or interest in or to the legal or beneficial ownership of any shares of stock or stock certificates of Rock Wool Insulating Company, or claiming, alleging or asserting any right, title or interest in or to assignments or instruments of assignments of shares of stock or certificates of stock of Rock Wool Insulating Company previously made by various shareholder owners to the Defendant Joseph M. Brennan and relating to any alleged legal or beneficial interest of Joseph M. Brennan in or to any Rock Wool Insulating Company's shares of stock or stock certificates, including particularly but not limited to Rock Wool Insulating Company's shares or stock certificates No. 1 for 253 shares issued to David L. and Bertha E. Sellers; No. 36 for 39 shares issued to Rose Kiernan; No. 40 for 2.4 shares issued to Anne Blockhan; No. 45 for .6 share issued to Dr. Mary Elizabeth Bates; No. 39 for 5 shares issued to Frances E. Morrissey; and No. 55 for 5 shares issued to Joseph M. Brennan, or any assignments or instruments of assignments relating to said shares.

The said Joseph M. Brennan may prosecute any appeal or institute any action in the Supreme Court of Colorado he shall deem appropriate. However, inasmuch as the con-

tinued litigation of Joseph M. Brennan's alleged claims for Rock Wool Insulating Company's shares of stock and stock certificates have been held to be contempt of this Court, this Court shall retain jurisdiction to review any and all acts and litigation relating to this matter called to the attention of this Court in order to determine whether or not further willful violation or disobedience of the order of this Court of June 24, 1963 may have been committed and the Court may, unless ordered otherwise by the Supreme Court of Colorado, vacate the stay of execution of the sentence passed upon Joseph M. Brennan upon a finding of any further willful violation or disobedience of the order of this Court, including vexatious and groundless appeals of this action, Civil Action No. B-45641, or Civil Action No. B-76366.

DONE IN OPEN COURT this 14th day of December, 1964.

BY THE COURT:

(Signed) SAUL PINCHICK
SAUL PINCHICK, JUDGE

Conformed Copy.